

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Dobson Cellular Systems, Inc.)	DA 04-3506
)	
Petition for Agreement with Redefinition of)	
Service Areas of Certain Rural ILECs)	
In the State of Michigan)	

**REPLY COMMENTS
of the
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT
OF SMALL TELECOMMUNICATIONS COMPANIES**

I. INTRODUCTION

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these reply comments in response to the proceeding on the Dobson Cellular Systems, Inc. (Dobson) petition requesting FCC concurrence with the Michigan Public Service Commission's (Michigan PSC) proposal to redefine the service areas of eight Michigan rural telephone companies.¹ OPASTCO is a national trade association representing more than 560 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 3.5 million customers. All of OPASTCO's members are rural telephone companies

¹*The Wireline Competition Bureau Seeks Comment on Petition to Redefine Rural Telephone Company Service Areas in Michigan*, CC Docket No. 96-45, Public Notice, DA 04-3506 (rel. Nov. 3, 2004).

as defined in 47 U.S.C. §153(37). In addition, they are all eligible telecommunications carriers (ETCs) in their respective service areas.

OPASTCO agrees with commenters who have urged the Commission to stay consideration of Dobson's petition until after the Commission completes the proceedings that are considering changes to the rules relating to rural high-cost support and the process for designating ETCs. However, if the Commission deems it necessary to address Dobson's petition prior to the resolution of these related proceedings, then it should reject the Michigan PSC's proposal to fragment the eight rural ILEC study areas, since the petition fails to provide a compelling rationale for such an action.

II. COMMENTS

On February 27, 2004, the Federal-State Joint Board on Universal Service (Joint Board) released a *Recommended Decision* that proposes to limit support to primary lines and to adopt federal guidelines for the designation of ETCs.² Shortly thereafter, the Commission issued a Notice of Proposed Rulemaking, seeking comment on this *Recommended Decision*.³ Most recently, the Joint Board released a Public Notice seeking comment on issues related to the rural high-cost support mechanism to succeed the five-year framework approved in the Rural Task Force Order.⁴ It is quite possible

² *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 19 FCC Rcd 4257 (2004).

³ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking, 19 FCC Rcd 10800 (2004).

⁴ *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, Public Notice, 19 FCC Rcd 16083 (2004).

that, as a result of these proceedings, there will be some changes in the way in which competitive ETCs are designated, and in the level of support that they receive.⁵

Both CenturyTel, Inc. (CenturyTel) and TDS Telecommunications, Corp. (TDS) have recommended that until the issues being considered in these proceedings are resolved, the Commission should stay consideration of the proposed service area redefinitions addressed in Dobson's petition.⁶ While key policies related to ETC designations are currently under review, it remains unclear how the Commission should evaluate whether or not the Michigan PSC's proposed redefinition of multiple rural telephone company service areas would serve the public interest. Thus, a stay on the review of Dobson's petition is the most reasonable approach for the FCC to take at this time.

However, if the Commission deems it necessary to address Dobson's petition prior to the resolution of the portability proceeding, then it should reject the Michigan PSC's proposal to fragment the eight rural telephone company study areas, since the petition fails to provide a compelling rationale for such an action. Service area redefinitions are not a required component of the Michigan PSC's designation of Dobson

⁵ See, Citizens Telecommunications Company of New York (Citizens) Comments in CC Docket No. 96-45 (filed June 21, 2004), p. 13.

⁶ CenturyTel Comments, pp. 6-7; TDS Comments, p. 8. Similar recommendations have been made in relation to the Commission's consideration of service area redefinitions for rural telephone companies in both Minnesota and Wisconsin. See, CenturyTel, Inc. Comments in CC Docket No. 96-45 (filed Aug. 26, 2003), pp. 7-8 and Comments in CC Docket No. 96-45 (filed Dec. 19, 2003), pp. 8-9; Citizens Telecommunications Company of Minnesota, Inc. and Frontier Communications of Minnesota, Inc. Comments in CC Docket No. 96-45 (filed Aug. 26, 2003), pp. 1-2, 6; Minnesota Independent Coalition Comments in CC Docket No. 96-45 (filed Aug. 26, 2003), pp. 10-11; OPASTCO Reply Comments in CC Docket No. 96-45 (filed Sept. 9, 2003), p. 3 and Reply Comments in CC Docket No. 96-45 (filed Jan. 5, 2004), p. 3; United States Telecom Association Comments in CC Docket No. 96-45 (filed Aug. 26, 2003), pp. 3-4; Wisconsin State Telecommunications Association-ILEC Division (WSTA) Comments in CC Docket No. 96-45 (filed Dec. 19, 2003), pp. 2-4.

as an ETC, as claimed in the petition.⁷ Moreover, the redefinition of the identified rural service areas so as to facilitate financially supported competition distorts the intended purposes of the High-Cost universal service program.

In its petition, Dobson claims that it is unable to provide its universal service offerings throughout the entire service areas of the eight rural telephone companies.⁸ As a result, the petition requests FCC concurrence with the Michigan PSC's proposal to redefine these service areas in a manner that conforms to the licensed service area of Dobson, so that the provisions of Section 214(e) of the Telecommunications Act of 1996 (the 1996 Act, the Act) would be met.⁹ This would require service area definitions at the wire center level.¹⁰

However, such an action is unnecessary since Dobson has the ability to provide service both inside and outside of its licensed service area, should it so choose. CenturyTel correctly indicates that Dobson can serve the entirety of the eight rural telephone company study areas – including those portions that extend beyond its licensed territory – through a combination of its own facilities, roaming agreements, and resale of other carriers' services, as permitted under Section 214(e)(1)(A) of the 1996 Act.¹¹ Moreover, the FCC has previously noted that a wireless ETC could “supplement its

⁷ *Dobson Cellular Systems, Inc. Petition for Agreement With Redefinition of Service Areas of Certain Rural ILECs in the State of Michigan*, CC Docket No. 96-45, p. 9 (filed Oct. 26, 2004) (Dobson Petition).

⁸ Dobson Petition, pp. 9-10.

⁹ *Ibid.*, p. 1. Section 214(e)(1)(A) requires that in order for a carrier to be designated as an ETC, it must be able to offer all of the services supported by federal universal service support throughout the service area for which such designation is received.

¹⁰ *Id.*, pp. 6-7.

¹¹ *See*, CenturyTel Comments, p. 5.

facilities-based service with services provided via resale”¹² so as to extend service to those portions of a rural telephone company’s study area not within the wireless carrier’s license area.

Thus, it is clear that Dobson is not incapable of serving the segments of the eight rural study areas that fall outside of the area for which it has a wireless spectrum license. Rather, Dobson has simply made a business decision to deny service to these areas. It is entirely at odds with the principles of universal service to allow a competitive ETC to exercise a preference to ignore portions of a rural telephone company’s study area that it deems unattractive or inconvenient to serve. CenturyTel also correctly notes that acceptance of the proposed redefinition would allow Dobson:

[T]o target only the most profitable wire centers [within the ILEC’s actual service area] and receive high-cost support even though the CETC’s average costs for the smaller area may be lower than the ILEC’s average costs for the entire zone.¹³

Further, such action would set a precedent for any future competitive ETCs that may be designated to target only those exchanges where the profit potential is greatest and the cost to serve is lowest, while ignoring the less lucrative, higher-cost exchanges. The ability of competitors to cream-skim through the adoption of narrowly defined service areas does nothing to promote universal service. It only increases the cost of providing service to the remaining customers that only the incumbent has the obligation to serve.

¹² *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8881-8882, para. 189 (1997).

¹³ CenturyTel Comments, pp. 4-5.

This, in turn, places at risk the incumbent's ability and incentive to continue investing in the infrastructure that brings high-quality services to these customers.¹⁴

Ultimately, the fundamental flaw of both Dobson's petition and the Michigan PSC's ETC designation for Dobson is that they rest solely on vague generalities regarding the generic benefits of competition.¹⁵ Both presuppose that the designation of Dobson as an ETC and the alignment of the identified rural telephone company service areas with the cellular license area are in the public interest because these actions would "promote competition."¹⁶ However, Congress did not intend for competition, in and of itself, to be used as the basis for designating additional ETCs in rural telephone company study areas or for facilitating their receipt of high-cost universal service support.¹⁷ As a result, if the Commission deems it necessary to act at this time, then it should reject the Michigan PSC's proposal to fragment the study areas of the eight rural telephone companies identified in the petition.

¹⁴ See, Stuart Polikoff, *Universal Service in Rural America: A Congressional Mandate at Risk*, OPASTCO, (January 2003), pp. 35-37 (OPASTCO White Paper).

¹⁵ See, Upper Peninsula Telephone Company, Inc. and Hiawatha Telephone Company, Inc. Comments, p. 9.

¹⁶ Michigan Decision, p. 2. See also, Dobson Petition, p. 10.

¹⁷ See also, CenturyTel Comments, p. 5.

III. CONCLUSION

For the foregoing reasons, OPASTCO urges the Commission to stay consideration of Dobson's petition pending the resolution of the current proceedings that are considering changes to the Commission's rules relating to high-cost support in competitive study areas as well as the process for designating ETCs. However, if the Commission deems it necessary to address the petition prior to the resolution of these related proceedings, then it should reject the Michigan PSC's proposal to fragment the eight rural telephone company study areas, since the petition fails to provide a compelling rationale for such an action.

Respectfully submitted,

**THE ORGANIZATION FOR THE
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CERTIFICATE OF SERVICE

I, Jeffrey W. Smith, hereby certify that a copy of the reply comments by the Organization for the Promotion and Advancement of Small Telecommunications Companies was sent by first class United States mail, postage prepaid, on this, the 1st day of December, 2004, to those listed on the attached list.

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